IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5769 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BUDHABHAI MALABHAI PARMAR
Versus
STATE OF GUJARAT AND OTHERS

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Appearance :
MR HR PRAJAPATI for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
Mr. N.D. Gohil, Asst. GOVERNMENT PLEADER for Respondent(s) : 3,
MR PURVISH MALKAN WITH MR. JITENDRA MALKAN for Respondent(s) : 4,
MR M.IQBAL A SHAIKH for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 30/06/2006

ORAL JUDGMENT

By filing this petition, the petitioner detenu has challenged detention order dated 03.03.06. By the aforesaid detention order, the petitioner is detained under the provisions of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 [hereinafter referred to as PBM Act].

The detention order is passed on the ground that the petitioner, who is running a Government approved fair price shop, has indulged into black marketing activities by selling essential articles in the open market without supplying the same to the poor people. It is alleged that the detenu has not supplied essential articles such as rice, sugar, etc. as also Kerosene to the card holders. It is also alleged that the petitioner has changed the place of business and has also shifted to a rented premises. After considering the material on record, the detaining authority has passed the aforesaid order, detaining the petitioner under the provisions of the PBM Act.

Learned advocate for the petitioner, Mr. Prajapati submitted that the authorities have suspended the licence of the fair price shop, and, therefore, there was no reason to pass any detention order against the petitioner as in view of suspension of the licence, there was no chance of the petitioner indulging in the same activities. Learned advocate Mr. Prajapati further submitted that the order of preventive

detention is required to be passed in order to see that a person may not indulge in the same activities again but if licence itself is suspended there was no occasion to indulge again, and hence there was no reason to pass the detention order. He further submitted that the detaining authority has observed in the grounds of detention that the detenu may approach court or competent authority against suspension of the licence by filing appeal/revision, obtain stay order against the suspension and continue the black marketing activities. Mr. Prajapati, however, submitted that the detaining authority has not stated as to on what basis and for what reasons it has come to such a conclusion, and has passed the order on mere apprehension.

Mr. Prajapati has relied on the judgment in the case of AMRITLAL vs. UNION OF INDIA reported in AIR 2000 SC 3675 to substantiate his say that there is no credible material before the detaining authority to draw an inference that the detenu will obtain orders from the competent court and therefore the inference is not warranted. He further submitted that the likelihood of the detenu moving the court or the appellate/revisional authority is not a cogent material and detention order based on such material is liable to be quashed.

It is true that the detaining authority has not stated any cogent reasons for coming to the conclusion that the petitioner may obtain stay order against the suspension of licence. I am of the view that there is nothing in the available records to draw such an inference. Atleast nothing is stated in this behalf in the detention order nor is there anything to show that the detenu has tried to approach the court, appellate/revisional authority praying for stay of the suspension of the licence. It

therefore appears to me that without there being any cogent material, the said observations have been made. The detaining authority should have stated as to on what basis such a conclusion is arrived at. Mr. Prajapati has rightly submitted that looking to the nature of serious allegations, it was not easy to interfere with the order of suspension of licence or that any court would grant stay against suspension of licence.

It is required to be noted that even till today, licence of the petitioner is under suspension as the suspension order is renewed from time to time. Mr. N.G. Gohil, learned Assistant Government Pleader, after taking instructions from the officer of the Civil Supplies Department present in the Court states that the concerned authorities are going to renew the suspension order and are also contemplating proceedings for cancellation of licence. After taking instructions, he further states that the suspension order is likely to be renewed for a further period of three months.

Learned advocate for the petitioner, Mr. Prajapati, however makes a voluntary statement that even is the suspension order is not extended, the petitioner will not take any step for three months from today so that the period of six months would be over by then. He further submitted that the petitioner will not even otherwise do his fair price shop business till 30th September 2006. This voluntary statement of learned advocate for the petitioner is recorded. It is for the Learned Assistant Government Pleader to inform the concerned authorities about this voluntary statement. The concerned authorities of the Civil Supplies Department shall do the

needful in this behalf. It will be also open to the concerned authorities to take appropriate proceedings for cancellation of the licence.

On what basis the detaining authority has come to a conclusion that the detenu will approach the court, appellate/revisional authority, obtain stay of the suspension of the licence and continue the black marketing activities is not reflected in the detention order. Even otherwise, in view of the aforesaid statement of Mr. Prajapati, the detenu is not going to do his business for a period of six months from the date of the original order and therefore, the object and purpose of preventive detention order will be served. This petition, however, is required to be allowed on the ground that the detaining authority has not stated any cogent reasons for coming to the conclusion that the petitioner may obtain stay order against the suspension of licence and continue the black marketing activities.

In the result, the petition is allowed. Order of detention passed against the petitioner dated 03.03.06 is quashed and set aside. The petitioner detenu: BUDHABHAI MALABHAI PARMAR is ordered to be released forthwith unless he is required in connection with any other offence.

The above voluntary statement of the learned advocate for the petitioner that the detenu will not do his fair price shop business till 30th September 2006 is recorded. It is for the Learned Assistant Government Pleader to inform the concerned authorities about this voluntary statementand it will be for the concerned authorities of the Civil Supplies Department to do

the needful in this regard. It will be also open to the concerned authorities to take appropriate proceedings for cancellation of licence.

Rule is made absolute, with no order as to costs.

[P. B. MAJMUDAR, J.]

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